

AMENDED IN SENATE AUGUST 4, 2014

AMENDED IN SENATE JUNE 17, 2014

AMENDED IN ASSEMBLY MAY 23, 2014

AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2193

Introduced by Assembly Member Gordon

February 20, 2014

An act to add *and repeal* Chapter 6.5 (commencing with Section 1650) to Division 2 of the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 2193, as amended, Gordon. Habitat Restoration and Enhancement Act.

Existing law establishes the Department of Fish and Wildlife in the Natural Resources Agency, administered by the Director of Fish and Wildlife. Existing law requires the director to administer various programs for the protection and conservation of fish and wildlife resources.

This bill would enact the Habitat Restoration and Enhancement Act and require the director to approve a habitat restoration or enhancement project, as defined, if specified conditions are met as determined by the director. The act would create the Habitat Restoration and Enhancement Account within the Fish and Game Preservation Fund and authorize the department to enter into an agreement to accept funds to achieve the purposes of the Habitat Restoration and Enhancement Act and

deposit those funds into that account. The act would authorize the department to impose a schedule of fees for ~~projects, a project~~, based on the cost of ~~a the~~ project, sufficient to recover all reasonable administrative and implementation costs of the department relating to the ~~projects, but not to exceed fees adopted by the department for standard lake or streambed alteration agreements for projects of comparable cost.~~ *project*. Moneys in the account would be available to the department, upon appropriation by the Legislature, for the purposes of administering and implementing the Habitat Restoration and Enhancement Act. *The bill would repeal the act on January 1, 2022.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:
- 3 (1) California is home to over 300 animal and plant species
4 listed as either threatened or endangered by the state and federal
5 governments. Some of these species' populations are so low that
6 recovery actions must be taken immediately to avoid further
7 population declines or extinctions of the species.
- 8 (2) Historic and continued degradation of our state's ecosystems,
9 whether in remote areas or in our cities, continues to impact the
10 habitats of these protected species and other animals and plants.
- 11 (3) Recovery of listed species depends largely on significant
12 improvements in habitat quality and requires numerous habitat
13 restoration projects statewide.
- 14 (4) Demand for these environmentally beneficial projects far
15 outpaces the regulatory approval process. As a result, hundreds of
16 small-scale projects designed to benefit California's most
17 vulnerable species and natural habitats are not being implemented.
- 18 (5) Expedited and coordinated agency permitting processes for
19 small-scale restoration projects have been shown to greatly boost
20 the number and geographic distribution of environmentally
21 beneficial projects across California – projects that cumulatively
22 improve water quality and aid in the recovery of salmon and
23 steelhead populations, migratory birds, and other sensitive species.
- 24 (b) It is the intent of the Legislature in enacting this measure to
25 provide for substantial permitting efficiency and thereby encourage

increased implementation of voluntary, environmentally beneficial, small-scale habitat restoration projects that do all of the following:

(1) Provide an individual and cumulative net environmental benefit.

(2) Incorporate measures to protect against any short-term substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project.

(3) Follow applicable preexisting state and federal agency permits, certifications, and exemptions.

SEC. 2. Chapter 6.5 (commencing with Section 1650) is added to Division 2 of the Fish and Game Code, to read:

CHAPTER 6.5. HABITAT RESTORATION AND ENHANCEMENT
Act

1650. This chapter shall be known, and may be cited, as the Habitat Restoration and Enhancement Act.

1651. As used in this chapter:

(a) "Fish passage guidelines" means those guidelines specified in the department's California Salmonid Stream Habitat Restoration Manual and the National Marine Fisheries Service, Southwest Region, Guidelines for Salmonid Passage at Stream Crossings, and subsequent amendments or updates to either document.

(b) "Habitat restoration or enhancement project" means a project with the primary purpose of accomplishing one or more of the following:

~~(1) Stream or river bank, lake, or other waterway revegetation, the primary purpose of which is to improve habitat.~~

~~(2) Stream or river~~

(1) Stream, river, or other waterway bank stabilization with native vegetation or other predominantly nonrock bioengineering techniques, or both, to reduce or eliminate erosion and sedimentation; sedimentation and improve habitat.

~~(3)~~

(2) Modification, replacement, or removal of existing fish passage barriers to improve water quality and fish passage, including associated bridge installation. Examples of fish passage barriers include, but are not limited to, road crossings and fords, or both; small permanent, flashboard, and seasonal permanent or flashboard dams; weirs, sills, and aprons; and poorly designed,

undersized, or failed culverts. ~~For purposes of this paragraph,~~
“seasonal dam” means a dam that is no larger than 25 feet in height
and 50-acre feet in designed impoundment capacity.

~~(4)~~

(3) Modifications of existing water diversion infrastructure to
enhance stream flow and improve fish habitat and survival,
including, but not limited to, pump relocation or removal and fish
screen installation, operation, and maintenance, when the project
does not increase total water diversion.

~~(5)~~

(4) Placement or installation of anchored and unanchored large
wood, rootwads, spawning gravel, and other in-stream habitat
structures or materials that benefit native fish by enhancing habitat,
increasing stream channel complexity, or both.

~~(6)~~

(5) Sediment source reduction on existing roads and trails,
including outslowing, berm removal, installation of rolling dips,
culvert and drainage upgrades, road decommissioning, and other
techniques designed to improve water quality and habitat for
species.

~~(7)~~

(6) Upland erosion control using bioengineering techniques and
native revegetation for the purpose of improving water or habitat
quality for species.

~~(8)~~

(7) Control and removal of aquatic and terrestrial invasive plant
species.

~~(9)~~

(8) Excluding or managing livestock to protect the bed and
banks of streams, or other sensitive habitats, using wildlife friendly
fencing and associated alternative stockwater supply based upon
an existing water right. ~~For purposes of this paragraph,~~
~~wildlife-friendly fencing means fencing that allows for the~~
~~movement of species indigenous to the area, including those species~~
~~that normally migrate or move through the project area.~~

~~(10)~~

(9) Restoration of freshwater and tidal hydrologic functions in
~~wetlands and estuaries~~ wetlands, excluding vernal pools, to improve
fish and wildlife habitat.

~~(11)~~

1 (10) Creation of off-channel habitat to restore historic rearing
2 and flow refugia for native fisheries and other aquatic species.

3 ~~(12)~~

4 (11) Restoration of floodplains to restore natural hydrologic
5 function, including, but not limited to, ~~revegetation levee and dike~~
6 ~~setback and breaching~~; *revegetation*.

7 ~~(13)~~

8 (12) Restoration and maintenance, including spillway repair
9 and sediment removal, of an existing off-stream pond *that does*
10 *not exceed a diversion of 10 acre-feet per year and two acres in*
11 *surface area* or a livestock stockpond ~~subject to a water right~~
12 ~~obtained pursuant to Article 2.7 (commencing with Section 1228)~~
13 ~~of Chapter 1 of Part 2 of Division 2 of the Water Code; that does~~
14 *not exceed a diversion of 10 acre-feet per year and two acres in*
15 *surface area* to benefit native aquatic species and their habitat.
16 *For purposes of this paragraph, "livestock stockpond" means a*
17 *water impoundment structure used pursuant to a water right*
18 *obtained pursuant to Article 2.7 (commencing with Section 1228)*
19 *of Chapter 1 of Part 2 of Division 2 of the Water Code.*

20 (c) "Project proponent" means a person, public agency, or
21 nonprofit organization seeking to implement a habitat restoration
22 or enhancement project.

23 (d) "Species recovery plan" means a guidance document
24 prepared by a government agency that identifies recovery actions,
25 based upon the best scientific and commercial data available,
26 necessary for the protection and recovery of listed species.

27 (e) "Wildlife friendly fencing" *means fencing intended to*
28 *preclude domestic grazing and browsing stock while providing*
29 *unrestricted access for native wildlife species.*

30 1652. (a) ~~(1)~~ Before a project proponent submits a written
31 request to the director pursuant to subdivision (b), the project
32 proponent may request a meeting with the department to discuss
33 the project proposal, required information, and the application
34 process.

35 ~~(2) If a project proponent requests a meeting pursuant to~~
36 ~~paragraph (1), the department shall inform the project proponent~~
37 ~~whether any plan would be required to be submitted for the project~~
38 ~~pursuant to subdivision (d).~~

39 (b) A project proponent may submit a written request to approve
40 a habitat restoration or enhancement project to the director.

1 (c) A written request to approve a habitat restoration or
2 enhancement project shall contain all of the following:

3 (1) The name, address, title, organization, telephone number,
4 and email address of the natural person or persons who will be the
5 main point of contact for the project proponent.

6 (2) A full description of the habitat restoration and enhancement
7 project that includes the designs and techniques to be used for the
8 project, restoration or enhancement methods, an estimate of
9 temporary restoration- or enhancement-related disturbance, project
10 schedule, anticipated ~~maintenance activities~~ *activities*, and how
11 the project is ~~expect~~ *expected* to result in a net benefit to any
12 affected habitat and species, consistent with paragraph (4) of
13 subdivision ~~(e)~~ *(d)*.

14 (3) An assessment of the project area that provides a description
15 of the existing flora and fauna and the potential presence of
16 sensitive species or habitat. *The assessment shall include preproject*
17 *photographs of the project area that include a descriptive title,*
18 *date taken, the photographic monitoring point, and photographic*
19 *orientation.*

20 (4) *A geographic description of the project site including maps,*
21 *land ownership information, and other relevant location*
22 *information.*

23 ~~(4)~~
24 (5) A description of the environmental protection measures
25 incorporated into the project design, ~~such as appropriate seasonal~~
26 ~~work limitations, measures to avoid and minimize impacts to water~~
27 ~~quality and potentially present species protected by state and~~
28 ~~federal law, and the use of qualified professionals for standard~~
29 ~~preconstruction surveys where protected species are potentially~~
30 ~~present,~~ *design*, so that no potentially significant adverse effects
31 on the environment, as defined in Section 15382 of Title 14 of the
32 California Code of Regulations, are likely to occur with application
33 of the specified environmental protection measures. *Environmental*
34 *protection measures may include, but are not limited to,*
35 *appropriate seasonal work limitations, measures to avoid and*
36 *minimize impacts to water quality and potentially present species*
37 *protected by state and federal law, and the use of qualified*
38 *professionals for standard preconstruction surveys where protected*
39 *species are potentially present.*

40 ~~(5)~~

1 (6) Substantial evidence to support a conclusion that the project
2 meets the requirements set forth in this section. Substantial
3 evidence shall include references to relevant design criteria and
4 environmental protection measures found in the documents
5 specified in paragraph (4) of subdivision (e): (d).

6 ~~(6) Engineering plans of the project if the project proponent~~
7 ~~proposes a project to modify an existing levee or dike or if the~~
8 ~~project proposes to modify, replace, or remove existing fish passage~~
9 ~~barriers.~~

10 ~~(7) Engineering or landscape architectural plans, or both,~~
11 ~~required by the department pursuant to subdivision (d).~~

12 ~~(d) The department may require a project proponent to submit~~
13 ~~in the written request the following plans depending on the size~~
14 ~~and scope of the project:~~

15 ~~(1) Landscape architectural plans or engineering plans, or both,~~
16 ~~for a project whose primary purpose is described in paragraph (2)~~
17 ~~of subdivision (b) of Section 1651.~~

18 ~~(2) Engineering plans for a project whose primary purpose is~~
19 ~~described in paragraph (4) of subdivision (b) of Section 1651.~~

20 ~~(e)~~

21 (d) Notwithstanding any other law, within 60 days after
22 receiving a written request to approve a habitat restoration or
23 enhancement project, the director shall approve a habitat restoration
24 or enhancement project if the director determines that the written
25 request includes all of the required information set forth in
26 subdivision (c), the project will maintain existing levels of human
27 health and safety protection, including, but not limited to, flood
28 protection, and the project meets all of the following requirements:

29 (1) The project purpose is voluntary habitat restoration and the
30 project is not required as mitigation.

31 (2) The project is not part of a regulatory permit for a nonhabitat
32 restoration or enhancement construction activity, a regulatory
33 settlement, a regulatory enforcement action, or a court order.

34 (3) The project is no larger than five acres in size, measured by
35 calculating the direct area of construction and construction-related
36 impact. The maximum length of stream that may be dewatered is
37 1,000 feet. For purposes of this paragraph, “dewater” means to
38 temporarily remove or divert, or both, groundwater, standing water,
39 or streamflow to allow for project construction such that
40 downstream water quality and flows are maintained.

(4) The project is consistent with, or identified in, sources that describe best available restoration and enhancement methodologies, including one or more of the following:

(A) Federal- and state-listed species recovery plans or published protection measures, programmatic and individual project biological opinions, or previously approved department agreements and permits issued for *voluntary* habitat restoration or enhancement projects.

(B) Department and National Marine Fisheries Service fish screening criteria or fish passage guidelines.

(C) The department's California Salmonid Stream Habitat Restoration Manual.

~~(D) Scientifically researched studies, guidance documents,~~
Guidance documents and practice manuals that describe best available habitat restoration or enhancement methodologies that are utilized or approved by the department.

(5) The project will not result in cumulative negative environmental impacts that are significant when viewed in connection with the effects of past, current, or probable future projects.

~~(f)~~

(e) If the director determines that the written request does not contain all of the information required by subdivision (c), or fails to meet the requirements set forth in subdivision ~~(e)~~, (d), or both, the director shall deny the written request and inform the project proponent of the reason or reasons for the denial.

~~(g)~~

(f) The director's approval of a habitat restoration or enhancement project pursuant to subdivision ~~(e)~~ (d), shall be in lieu of any other permit, agreement, license, or other approval issued by the department, including, but not limited to, those issued pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3, Chapter 10 (commencing with Section 1900) of Division 2, and Chapter 6 (commencing with Section 1600) of Division 2.

~~(h)~~

(g) Nothing in this chapter shall be construed as expanding the scope of projects requiring a permit, agreement, license, or other approval issued by the department.

~~(i)~~

1 (h) The director's approval of a habitat restoration or
2 enhancement project pursuant to subdivision-(e) (d) shall constitute
3 an action taken by a regulatory agency, as authorized by state law,
4 to ensure the maintenance, restoration, or enhancement of a natural
5 resource where the regulatory process involves procedures for the
6 protection of the environment.

7 (j)

8 (i) (1) During project implementation, the project proponent
9 shall notify the department within 48 hours of any minor
10 amendments to the project.

11 (2) A minor amendment shall not create potentially significant
12 environmental impacts, trigger other permit requirements, or
13 change the scope of the project as a whole.

14 ~~(3) For purposes of this subdivision, "minor amendment" means~~
15 ~~an action necessary for improving the project's habitat restoration~~
16 ~~or enhancement outcome or for further avoidance of impacts.~~

17 (k)

18 (j) (1) If the director determines at any time that the project is
19 no longer consistent with subdivision-(e); (d), due to a material
20 change between the project as submitted and the project being
21 implemented or a change in the environmental circumstances in
22 the area of implementation, the director shall notify the project
23 proponent in writing and project implementation shall be
24 suspended. Written notice from the director shall be delivered in
25 person, by certified mail, or by electronic communication to the
26 project proponent and shall specify the reasons why approval of
27 the project was suspended. The approval for a project shall not be
28 revoked pursuant to this subdivision unless it has first been
29 suspended pursuant to this subdivision.

30 (2) Within 30 days of receipt of a notice of suspension, the
31 project proponent may file an objection with the director. Any
32 objection shall be in writing and state the reasons why the project
33 proponent objects to the suspension. The project proponent may
34 provide additional environmental protection measures, design
35 modifications, or other evidence that the project is consistent with
36 subdivision-(e) (d) and request that the notice of suspension should
37 be lifted and approval granted.

38 (3) The director shall revoke approval or lift the suspension of
39 project approval within 30 days after receiving the project
40 proponent's objection pursuant to paragraph (2).

1 (k) A project proponent shall submit a notice of completion to
2 the department no later than 30 days after completion of the
3 project. The notice of completion shall demonstrate that the project
4 has been carried out in accordance with the project's description.
5 The notice of completion shall include a map of the project
6 location, including final boundaries of the restoration area or
7 areas and post-project photographs. Each photograph shall include
8 a descriptive title, date taken, photographic monitoring point, and
9 photographic orientation.

10 (l) Pursuant to Section 818.4 of the Government Code, the
11 department and any other state agency exercising authority under
12 this section shall not be liable with regard to any determination
13 or authorization made pursuant to this section.

14 1653. (a) The Habitat Restoration and Enhancement Account
15 is hereby created in the Fish and Game Preservation Fund.

16 (b) The department may enter into an agreement to accept funds
17 from any public agency, person, business entity, or organization
18 to achieve the purposes of this chapter. The department shall
19 deposit any funds so received in the account. The funds received
20 shall supplement existing resources for department administration
21 and permitting of projects and programs included in this chapter.

22 (c) The department may impose a schedule of fees for ~~projects,~~
23 a project, based on the cost of a the project, sufficient to recover
24 all reasonable administrative and implementation costs of the
25 department relating to the ~~projects, but not to exceed fees adopted~~
26 ~~by the department pursuant to Chapter 6 (commencing with Section~~
27 ~~1600) of Division 2 for standard lake or streambed alteration~~
28 ~~agreements for projects of comparable cost.~~ project.

29 (d) Moneys in the account shall be available to the department,
30 upon appropriation by the Legislature, for the purposes of
31 administering and implementing this chapter.

32 1654. This chapter shall remain in effect only until January 1,
33 2022, and as of that date is repealed, unless a later enacted statute,
34 that is enacted before January 1, 2022, deletes or extends that
35 date.